



U.S. Citizenship
and Immigration
Services

FILE:

Office: VERMONT SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:

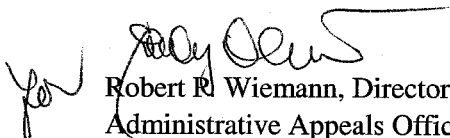
APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert R. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was a national of El Salvador. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the evidence that was previously submitted, which established the applicant's nationality and continuous residence, was not considered. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period and to establish his nationality.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Continuously physically present, as defined in 8 C.F.R. §244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided, as defined in 8 C.F.R. §244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established his nationality.

The record shows that the applicant filed his TPS application on May 25, 2001. On October 25, 2002, the applicant was provided the opportunity to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date of filing the application. The applicant was also requested to submit evidence establishing that he is a citizen and national of El Salvador. The applicant, in response, provided evidence in an attempt to establish his continuous residence and his physical presence in the United States. He did not present evidence of his nationality. Therefore, the director denied the application.

On appeal, counsel for the applicant asserts that the service center failed to consider evidence previously submitted which clearly and convincingly demonstrates that the applicant is a national of El Salvador and has continuously resided in the United States since February 13, 2001. The applicant also provides additional evidence in an attempt to establish his nationality. Specifically, the applicant provides copies of three Spanish language documents with no English translation, one of which appears to be a birth certificate. However, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he

or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). As the applicant failed to comply with the aforementioned, the documents will not be considered in the rendering of this decision. Consequently, the director's conclusion that the applicant failed to establish his nationality will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001 to the date he filed the application

As stated above, the applicant was requested on October 25, 2002 to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of pay stubs from Tassi Drywall Construction Co., Inc., dated from February 2, 2001 to October 25, 2002.
2. A copy of the first page of a 2001 Form 1040, U.S. individual Income Tax Return.
3. Copies of documents pertaining to medical treatment.

The pay stubs dated from February 2, 2001 to September 7, 2001, are in the name of [REDACTED] and list a different social security number than the other pay stubs, which are in the applicant's name. The applicant has not only failed to establish that he and [REDACTED] are one and the same person; on his application he indicated that he had never used another name. Therefore, the pay stubs that might have established the applicant's date of entry and continuous residence since February 13, 2001, and his continuous residence since March 9, 2001, have little evidentiary worth. The remaining pay stubs indicate the applicant's presence in the United States in October 2001 at the earliest. The tax document also fails to establish the applicant's date of entry, continuous residence and continuous physical presence during the qualifying period. The medical records pertain to treatment that occurred on June 15, 2002, which is clearly after the dates required to establish qualifying continuous residence and continuous physical presence.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant furnished:

1. Copies of additional pay stubs from Tassi Drywall Construction Co., Inc.
2. A copy of a 2001 Form W-2, Wage and Tax Statement and other tax-related documents for the years 2002 and 2003.

The applicant also resubmits evidence that was previously provided.

As with the pay stubs discussed above, these pay stubs that indicate that the employee was present in the United States during the qualifying period are in the name of [REDACTED] and the applicant has failed to establish that he and [REDACTED] are one and the same person. The tax documents also fail to establish that the applicant continuously resided and was continuously physically present in the United States during the qualifying period.

The applicant has failed to establish his qualifying residence or physical presence in the United States during the period from February 13, 2001 and March 9, 2001, respectively. He has, therefore, failed to establish that he has

met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.